

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RICHARD STEINER
9641 Homestead Trail
Anchorage, AK 99507

Plaintiff,

V.

BUREAU OF OCEAN ENERGY
MANAGEMENT
1849 C Street, NW
Washington, D.C. 20240

Defendant.

Civil Action #

COMPLAINT

PRELIMINARY STATEMENTS

1. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the United States Bureau of Ocean Energy Management ("BOEM" or "Agency") to disclose records lawfully requested but wrongfully withheld.
2. The Agency's statutory production period expired and BOEM failed to produce any records in response to Plaintiff's FOIA request (Request No. BOEM 2013-00005).
3. FOIA requires federal agencies to disclose all records requested by the public unless the records are specifically exempt from disclosure. FOIA reflects a "profound national commitment to ensuring an open Government" and directs agencies to "adopt a presumption in favor of disclosure." Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).
4. Plaintiff Richard Steiner is a retired University of Alaska professor of marine conservation.
5. The records Plaintiff seeks are a matter of public concern because the records will likely contribute to the public's understanding of events affecting Mr. Steiner's public service role

regarding the nation's offshore marine environment. Additionally, the records Plaintiff seeks are a matter of public concern because they shed light on the Agency's understanding of Mr. Steiner's role in providing the public with educational and outreach services regarding the environmental impacts caused by Outer Continental Shelf (OCS) oil and gas development.

6. Plaintiff's request, originally submitted on October 18, 2012, was amended at the Agency's request and resubmitted by Plaintiff on November 1, 2012. The Agency acknowledged receipt of Plaintiff's amended request in a letter dated November 2, 2012.
7. The Agency located responsive records and informed Plaintiff of this in a letter dated November 21, 2012. The Agency's letter also told Plaintiff to expect a delay in record production because eleven FOIA requests were being processed ahead of Plaintiff's request.
8. To date, Plaintiff has not received any records responsive to the request.
9. The Agency's actions are arbitrary and capricious and amount to a constructive denial of Plaintiff's FOIA request. The Agency's conduct frustrates Plaintiff's efforts to inform the public about BOEM's actions and policies regarding climate change and the environmental impacts of OCS oil and gas development.
10. Plaintiff has exhausted all FOIA administrative remedies, 5 U.S.C. § 552(a)(6)(C), and seeks a court order requiring BOEM to immediately produce all records responsive to Request No. BOEM 2013-00005 as well as other appropriate relief.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action under FOIA, 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
12. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

13. This Court is a proper venue under 5 U.S.C. § 552(a)(4)(B), which permits FOIA actions to be filed in the United States District Court for the District of Columbia.
14. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412 and 5 U.S.C. § 552(a)(4)(E).

PARTIES

15. Plaintiff Richard Steiner is a retired University of Alaska professor of marine conservation. For decades Plaintiff conducted marine conservation outreach programs through the University of Alaska. Plaintiff continues to publically advocate for marine conservation, environmental sustainability, ethics in government, and broader dissemination of information pertaining to environmental public policy.
16. Defendant BOEM is an agency of the United States as defined by 5 U.S.C. § 552(f)(1).
17. BOEM's purpose is to manage the development of the nation's offshore resources in an environmentally and economically responsible manner. Its functions include offshore leasing, resource evaluation, review and administration of oil and gas exploration and development plans, renewable energy development, National Environmental Policy Act (NEPA) analysis and environmental studies.
18. BOEM has a duty to provide public access to documents in its possession consistent with the requirements of the FOIA. BOEM is denying Plaintiff access to its records in contravention of federal law.

FACTS

19. Plaintiff submitted a records request to BOEM, pursuant to FOIA and the Privacy Act, 5 U.S.C. § 552a, on October 18, 2012.

20. The Agency's national FOIA Officer, Ms. Rosemary Melendy, sent a letter to Plaintiff on October 31, 2012 acknowledging receipt of Plaintiff's request and assigning it Request No. BOEM-2013-00005. This letter also instructed Plaintiff to amend the October 18, 2012 request to include more concise descriptions of the records sought.
21. Plaintiff complied with the Agency's instructions to amend the request by submitting a more detailed and concise description of the records to the Agency on November 1, 2012.
22. Plaintiff's amended request (henceforth "request") sought records related to himself, by name or indirect implication, that: were authored by BOEM/MMS Deputy Regional Director Jeffrey Loman and/or Regional Director John Goll; allege "environmental conspiracy" regarding the release of agency records; and/or were communications between MMS/BOEM and the University of Alaska and/or the National Oceanic and Atmospheric Administration (NOAA) Sea Grant. Plaintiff's request sought records located in the Agency's Alaska Region Office that were created, transmitted, or dated between January 1, 2007 and November 1, 2012.
23. The "environmental conspiracy" in Plaintiff's request refers to allegations made by the Agency regarding an "environmental conspiracy" between Plaintiff and BOEM scientists. The alleged "environmental conspiracy" was cited by the U.S. Department of Interior's Office of Inspector General in its Report of Investigation concerning that scientist. Until that report's release in September 2012, Plaintiff had no knowledge that he was investigated by or was a person of interest to BOEM.
24. Plaintiff's request sought a fee waiver because the request is for records solely in the public interest, for non-commercial uses, and the records will be released to the public because they concern matters of important public policy.

25. The Agency confirmed receipt of Plaintiff's amended request in a letter to Plaintiff dated November 2, 2012 that was signed by Regional FOIA Officer, Natasha Y. Alcantara. This letter granted Plaintiff's fee waiver request and stated that "there will be a delay in processing your request."
26. The Agency's Ms. Alcantara sent a letter to Plaintiff on November 20, 2012 stating: "We have conducted a search for responsive records and found no records contained within a Privacy Act system of records, therefore, this request is being processed under FOIA." Accordingly, Plaintiff now seeks records and brings this action pursuant to FOIA only.
27. The Agency's Ms. Alcantara sent another letter to Plaintiff on November 21, 2012 stating: "BOEM Alaska OCS Region has located documents that are responsive to your request . . . there will be a delay in processing your request. There are eleven complex FOIA requests being processed ahead of your request."
28. Plaintiff has not received any records responsive to the request and BOEM has not indicated that production is imminent.
29. Plaintiff contacted the Agency's Ms. Alcantara by email on February 27, 2013 inquiring about the status of the FOIA request and record production. To date, the Agency has not responded to Plaintiff's inquiry.
30. Plaintiff has afforded the Agency ample time, beyond that which is legally required, to produce the responsive records. Plaintiff submitted his request to the Agency more than 150 days ago.
31. The twenty work-day timeframe for responding to FOIA requests has long since passed.

32. Plaintiff has exhausted all administrative remedies. Administrative remedies are deemed exhausted whenever an agency fails to comply with the applicable time limits, as stated by 5 U.S.C. § 552(a)(6)(C).

33. Plaintiff turns to this Court to enforce FOIA's guaranteed public access to Agency records and other remedies.

CAUSE OF ACTION

Violation of the Freedom of Information Act

34. Plaintiff incorporates the allegations in paragraphs 1 through 33.

35. The Agency's failure to disclose the records Plaintiff requested in Request No. BOEM-2013-00005 is a constructive denial and wrongful withholding of records in violation of FOIA, 5 U.S.C. § 552, and the Agency's own regulations promulgated thereunder.

Relief Requested

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an Order declaring that the Agency is wrongfully withholding the requested Agency records;
- ii. Issue a permanent injunction directing the Agency to disclose to Plaintiff all wrongfully withheld records;
- iii. Maintain jurisdiction over this action until the Agency is in compliance with FOIA, the Administrative Procedure Act, and every order of this Court;
- iv. Award Plaintiff's attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: April 12, 2013

Respectfully submitted,

/s/ Kathryn Douglass
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